In the Supreme Court

Appeal from the Court of Appeals
Owens, P.J., and Cavanagh, and Neff, JJ.

CITY OF MT. PLEASANT,
Petitioner-Appellant,

v.

MICHIGAN STATE TAX COMMISSION,
Respondent-Appellee.

Supreme Court No. 129453

Court of Appeals No. 253744

Michigan Tax Tribunal Docket Nos. 191496, 196247, 238596, 240992, 240993, 240994, 240995

BRIEF OF PETITIONER-APPELLANT CITY OF MT. PLEASANT

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Oral Argument Requested

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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

Judgment was entered pursuant to a Tax Tribunal opinion, which determined that various parcels of city-owned property fell outside the exemption to ad valorem taxes in MCL 211.7m. (Opinion and Judgment, 10/31/03; Apx 180a). The Michigan Court of Appeals affirmed the Tax Tribunal's opinion and judgment on the basis that the land "was not exempt from ad valorem taxes while being marketed to private users." (Court of Appeals No. 253744, 6/21/05; Apx 208a). The Michigan Court of Appeals denied the City of Mt. Pleasant's motion for reconsideration. (Order, 8/1/05; Apx 212a). The City timely applied for leave to appeal from this Court. (Application for Leave to Appeal, 9/13/05). The Court granted the application. (Order, 1/13/06; Apx 213a).

This Court has jurisdiction of this appeal by virtue of its order granting leave to appeal. (Order, Supreme Court No 129453, 1/13/06; Apx 213a). In its order, this Court limited the grant of leave to "whether MCL 211.7m exempts property from taxation on the basis that it is 'used for public purposes' within the meaning of that statutory provision when the property is owned by a city after having been acquired to allow the area to be annexed to that city and is being assembled and prepared with infrastructure for eventual sale for economic development purposes that have been determined by the city to be in the public interest." (Order, 1/13/06; Apx 213a). This Court directed the parties to include in their briefs "a discussion of (1) the time period(s) that petitioner owned the property at issue or parts thereof, (2) the nature of any improvements to or other use of the property by petitioner during those periods, and (3) whether, by virtue of such improvements or uses, the property was 'used for public purposes' within the meaning of MCL 211.7m." *Id.*

STATEMENT OF THE QUESTION PRESENTED

DID THE MICHIGAN LEGISLATURE EXEMPT PROPERTY FROM TAXATION PURSUANT TO MCL 211.7m ON THE BASIS THAT IT IS "USED FOR PUBLIC PURPOSES" WHEN THE PROPERTY IS OWNED BY A CITY AFTER HAVING BEEN ACQUIRED TO ALLOW THE AREA TO BE ANNEXED TO THAT CITY AND IS BEING ASSEMBLED AND PREPARED WITH INFRASTRUCTURE FOR EVENTUAL SALE FOR ECONOMIC DEVELOPMENT PURPOSES THAT HAVE BEEN DETERMINED BY THE CITY TO BE IN THE PUBLIC INTEREST?

The Tax Tribunal answers "No."

The Michigan Court of Appeals answers "No."

The City of Mt. Pleasant answers "Yes."

STATEMENT OF FACTS

A. NATURE OF THE ACTION.

This property tax dispute involves the question of whether property owned by the City of Mt. Pleasant was exempt from taxation under the provisions of § 7m of the General Property Tax Act. MCL 211.7m. The appeal arises out of several tax tribunal cases, which have been consolidated. (Michigan Tax Tribunal Docket Nos. 191496, 196247, 238596, 240992, 240993, 240994, 240995; Apx 1a-10a). At the Tax Tribunal these matters were consolidated and heard under Michigan Tax Tribunal docket no. 191496.

Judgment was entered pursuant to a Tax Tribunal opinion, which determined that various parcels of city-owned property fell outside the exemption to ad valorem taxes in MCL 211.7m. (Opinion and Judgment, 10/31/03; Apx 180a). The Michigan Court of Appeals affirmed the Tax Tribunal's opinion and judgment on the basis that the land "was not exempt from ad valorem taxes while being marketed to private users." (Court of Appeals No. 253744, 6/21/05; Apx 208a). The Michigan Court of Appeals denied the City of Mt. Pleasant's motion for reconsideration. (Order, 8/1/05; Apx 212a). The City timely applied for leave to appeal from this Court. (Application for Leave to Appeal, 9/13/05). The Court granted the application. (Order, 1/13/06; Apx 213a).

B. THE TAX TRIBUNAL PETITIONS, TAX TRIBUNAL DECISIONS, AND SUBSEQUENT APPEAL.

On September 26, 2002 the Tax Tribunal held a hearing in this matter. (Tr, 9/26/02, pp 3-80; Apx 101a-178a). The parties stipulated to present the testimony of two witnesses (the city manager and the city assessor) for the City of Mt. Pleasant and to the introduction of all exhibits. (Tr, 9/26/02, pp 3-4, 58-63; Apx 101a-102a, 156a-161a). The parties then agreed to submit proposed findings of fact and conclusion of law as they related to the issues. (*Id.*)

This property tax dispute began when the city assessor sought guidance concerning property owned by the City. In response to an inquiry made by the then-city assessor, the Michigan State Tax Commission advised the city assessor that the State Tax Commission believed property owned by the City was assessable. (Exhibit P-1; Apx 42a). The City had platted the property and was marketing it to the general public. The Tax Commission contended that it should be placed on the 1993 assessment roll. (Exhibit P-1; Apx 42a). The platted lots were then placed on the 1993 tax roll. (Tr, p 44; Apx 142a; Opinion and Judgment, 10/31/03, pp 19-20; Apx 198a-199a). The decision of the assessor to place the platted lots on the tax roll was confirmed by the Board of Review. (Opinion and Judgment, p 20; Apx 199a). The City of Mt. Pleasant appealed the decision to place the platted lots on the tax roll to the Michigan Tax Tribunal.

Nine of those platted lots (known as Bellows Subdivision) were appealed by the City to the Tax Tribunal in 1993 in petition no. 191496. The other six platted lots (known as Preston Subdivision) were appealed to the Tax Tribunal in 1993 in petition no. 196247. (Petitioner's Exhibit 6; Apx 48a; Tr, p 44; Apx 142a). In November 1993, the City of Mt. Pleasant moved to consolidate Michigan Tax Tribunal docket no. 191496 and Michigan Tax Tribunal docket no. 196247; and in February 1994, the Tribunal consolidated those petitions. (Opinion and Judgment, p 5; Apx 184a).

A third appeal to the Tax Tribunal was filed by the City in June 1996 in docket no. 238596 after the city assessor, acting at the direction of the State Tax Commission, placed thirty-five additional city-owned residential parcels on the tax roll. (Opinion and Judgment, pp 5, 19; Apx 184a, 198a).

Those three cases were then held in abeyance pending the State Tax Commission's determination as to whether additional properties owned by the City should be placed on the

assessment roll pursuant to the provisions of section 154 of the General Property Tax Act (MCL 211.154). (Opinion and Judgment, p 7; Apx 186a). That provision allows the State Tax Commission to add property to the tax rolls for the current year and two previous years where it finds that such property has been incorrectly "omitted" from such tax roll. The State Tax Commission decided that the parcels at issue should be taxable and directed the city assessor to spread the appropriate millage rates upon the corrected taxable value for each year separately on the 1996 tax roll. (Opinion and Judgment, Finding No. 21, p 19; Apx 198a). The city assessor did so for 1993, 1994, and 1995 and the City then appealed those assessments in docket nos. 240992, 240993, 240994, and 240995. (Opinion and Judgment, p 7 and Finding No. 23, p 20; Apx 186a, 199a). In 1997, those four petitions were consolidated with the three previous petitions by the City. (Opinion and Judgment, pp 7-8; Apx 186a-187a).

The parties then agreed to submit much of the evidence in this case to the Tribunal in the form of stipulated exhibits. The stipulated exhibits and the testimony of the City Assessor and City Manager were presented to the Tribunal at the hearing held on September 26, 2002. (Opinion and Judgment, p 9; Apx 188a; Tr, 9/26/02, pp 1-80; Apx 99a-178a). At the direction of the Tribunal, both parties then submitted proposed findings of fact and conclusions of law followed by reply briefs. (Opinion and Judgment, pp 9-10; Apx 188a-189a).

On October 31, 2003, the Tribunal issued its opinion concluding that the property was not used for a public purpose and, therefore, was not entitled to an exemption under MCL 211.7m of the General Property Tax Act. The Tribunal also found that the State Tax Commission had properly removed the exemption from various property parcels finding that, since such property was not exempt, it had been incorrectly "omitted" from the tax roll. Finally, it found that, in removing the exempt status from those parcels pursuant to the authority of MCL 211.154, the State Tax Commission, when it acted in 1996, could only go back to 1994 (the current

assessment year and two previous years). Its actions to add the parcels to the 1993 tax year was vacated.

The City filed a timely Motion for Reconsideration in November 2003, which the Tax Tribunal denied on January 29, 2004. The City appealed to the Court of Appeals on February 11, 2004.

The Court of Appeals affirmed the Tax Tribunal decision. (*City of Mt. Pleasant v State Tax Comm*, slip op, p 1; Apx 208a). The Court disagreed with the City's contention that the Tribunal had erred as a matter of law in holding that the property was not exempt. (*Id.*, p 2; Apx 209a). The Court observed that tax exemptions are narrowly construed and also that the test is based on evaluation of the present use, rather than a prospective use. (*Id.*) Although the Court recognized that "economic development is a public purpose," it disagreed that the property was exempt. (*Id.*) The Court reasoned that "the existence of specific economic development programs providing property tax exemptions suggests that the exemptions only exist under the terms of the statutes." (*Id.*) The Court did not identify or list any specific programs or statutes or elaborate on this reasoning. The Court also relied on a Kansas decision, which held that marketing a property for sale was not enough because it was not an "active, actual utilization of the property." (*Id.*, p 3 quoting *In re City of Wichita*, 255 Kan 838, 847; 877 P2d 437 [1994]).

The City sought reconsideration from the Court of Appeals, which was denied. (Order, 8/1/05; Apx 212a). The City then sought leave to appeal to this Court. (Application for Leave to Appeal, 9/13/05). This Court granted leave to appeal. (Order, 1/13/06; Apx 213a).

C. THE PROPERTY AND ITS USE.

In 1990, the City of Mt. Pleasant embarked upon a project generally referred to as Project 2000. In doing so, it purchased and then, pursuant to the project plan, annexed approximately 320 acres of vacant land adjacent to its boundaries. (Tr, pp 5-8; Apx 103a-106a; Opinion and

Judgment, Finding No. 2, p 16; Apx 195a). The City purchased this land primarily for two reasons: 1) to extend streets to connect with a proposed ring road system around the community; and 2) to have sufficient land for new development to expand the tax base. (Petitioner's Exhibit 18; Apx 17a; Tr, p 17; Apx 115a).

The street extensions were based on recommendations made in an urban area traffic master plan the City had completed. That plan identified streets that should be extended and streets that should be widened. (Tr, pp 12, 13, 15; Apx 110a, 111a, 113a). The plan recognized the need to extend certain streets to connect to a ring road system and to efficiently move traffic in and around the City. (*Id.*) Some of the proposed street extensions were not in the City under the City's control. (Tr, p 15; Apx 113a; Petitioner's Exhibit 18; Apx 17a). The City needed to acquire property to effectuate this ring-road plan. (Tr, p 14; Apx 112a).

Additionally, a housing market study prepared for the City indicated the need for more lower income and affordable housing within the City. (Tr, p 10; Apx 108a; Petitioner's Exhibit 18; Apx 17a). At that time (1990), the City had very little vacant industrial land within its limits. (Tr, p 16; Apx 114a). The need for additional residential and industrial land was seen as a necessary step in expanding the tax base of the City. (Petitioner's Exhibit 16 and Exhibit 18; Apx 21a, 17a). Some of the acquired land was eventually sold to a local housing commission, which built twenty-four units of low income housing, and some was sold to a private developer, which built 150 units of moderate income housing. (Tr, pp 10-11; Apx 108a-109a).

Annexation was necessary to enable the City to accomplish its goals. (Tr, pp 15, 16; Apx 113a, 114a; Petitioner's Exhibits 16, 17, 18; Apx 21a, 25a, 17a). Another reason for acquiring and annexing the subject property was that over forty percent of the land in the City was nontaxable, being owned by Central Michigan University and other tax exempt organizations.

(Tr, pp 16, 17; Apx 114a, 115a; Petitioner's Exhibit 18, p 2; Apx 17a). The City sought to rectify that by expanding and facilitating necessary economic development.

The City approved the acquisition in a resolution, which set forth the City's goals of extending its roads, promoting economic development, and obtaining vacant land to annex. (Petitioner's Exhibit 16; Apx 21a). Annexation by the City occurred pursuant to MCL 117.9(8), which allows a city to annex vacant land adjacent to its boundaries, which it owns, simply by resolution of its city council. MCL 117.9(8), unlike other methods of annexation, does not require further or additional approval by the unit of government from which the property is annexed or by the voters. In order to accomplish the annexation by this unilateral method under MCL 117.9(8), the City needed to own the vacant land. Accordingly, the Council passed a resolution annexing the property on June 28, 1990, and an Amended Resolution for Annexation was adopted on August 24, 1990. (Petitioner's Exhibit 16 and Exhibit 17; Apx 21a, 25a).

The City also retained consultants who developed a conceptual master plan for Project 2000. (Tr, pp 18, 19; Apx 116a, 117a; Petitioner's Exhibit 24; Apx 26a; Joint Exhibit 1, Apx 35a). The purpose of the conceptual plan was to give "a visual representation from June of 1991, of what this property could develop into." (Tr, p 38; Apx 136a). The conceptual plan was intended to show "three of the four parent parcels, and some of the types of things that were conceived at that time; such as commercial, multifamily, single family, and so on." (Tr, p 38; Apx 136a).

After acquisition of the property, the City platted, marketed, developed, and sold the property to various developers, investors, or governmental agencies. (Opinion and Judgment, p 16, Finding No. 5; Apx 195a). As to the portions of the property which were identified as "Industrial Park," the City secured a $600,000 EDA grant to pay for part of the cost of the infrastructure it installed. The property was sold either to developers or end users who

constructed various commercial or industrial structures on the property. (Opinion and Judgment, p 17, Finding No. 7; Apx 196a). Because the purpose of Project 2000 was to enhance the City's tax base and also to create jobs, the City was selective as to whom it sold property within the industrial park that was developed. (Tr, pp 9, 10; Apx 107a, 108a). It selected purchasers who would create jobs as well as enhance the tax base.

One of the first sales or transfers of part of the subject property occurred back in 1992 when land was transferred by the City to the Housing Commission. (Tr, p 28; Apx 126a). Another piece was sold to a private party in 1992 or 1993 and another in 1995 or 1996. (Tr, pp 28-29; Apx 126a-127a). Over the next several years, portions of the property were sold to third parties. (Exhibit 8; Apx 56a). At least one sale was made every year from 1990 through 2001. (*Id.*) By the time of the Tax Tribunal hearing in September, 2002, the City had sold or transferred all of the subject property, except for one ten-acre parcel to third parties. (Tr, p 51; Apx 149a; Joint Exhibits 9 and 10; Apx 59a, 60a). The resulting uses from those sales/transfers include:

- 5 subdivisions
- 1 condo development
- 3 apartment developments
- a soccer field and park
- a county emergency center
- a state police post
- a 138 acre industrial park
- an optometrist's office, and
- 2 commercial uses

(Joint Exhibits 9 and 10; Apx 59a, 60a). Photos taken of various parts of the subject property (Tr, p 39; Apx 137a), show that most of the property had been developed as of the Tax Tribunal hearing date. (Exhibit 3; Apx 85a).

By September, 2002, the City has extended the streets as planned. (Tr, p 14; Apx 112a). It had sold some of the subject property to various third parties for low and moderate income

housing. Those third parties include the local public housing commission (24 units), a private developer (150 units), and another developer for elderly housing. (Tr, pp 10-11; Apx 108a-109a). Other portions of the property had been sold or transferred to other governmental agencies for various governmental purposes including a state police post, a county health service, and Social Security building. A parcel had been set aside for use as a park, and other parcels had been marketed and sold to private developers for commercial and industrial development.[1]

As of September 26, 2002, the date of the hearing in the Tax Tribunal, Paul Preston, the city manager, had spent eleven and one-half years "working with private developers, construction of the industrial park, and the marketing of the property." (Tr, p 9; Apx 107a).

All of those parcels (except those which were dedicated to a specific public use and, therefore, exempt under the general Property Tax Act; i.e., the park, county emergency center, and state police post) were placed on the tax roll by the City once each property was sold. The City sent out a tax bill to the new owner. (Tr, p 49; Apx 147a). In other words, all of the parcels were on the tax roll (and Project 2000 a completed project) by the Tax Tribunal hearing date except one ten-acre parcel of land, approximately eleven and one-half years after commencement of Project 2000. (Tr, pp 49-52; Apx 147a-150a).

[1]A list of the various development projects which have resulted from the City's efforts was set forth in Joint Exhibit 10.

SUMMARY OF THE ARGUMENT

The Michigan Legislature exempted property from taxation pursuant to MCL 211.7m when it is "used for public purposes" and owned by a city. The City of Mt. Pleasant's property falls within this exemption because it was acquired to allow the area to be annexed to the City, and is being assembled and prepared with infrastructure for eventual sale for economic development purposes that have been determined by the City to be in the public interest. The language used in MCL 211.7m to create the exemption is broad:

> Sec. 7m. Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.

MCL 211.7m.

This Court's statutory interpretation jurisprudence makes clear that courts are to effectuate the legislative intent by enforcing the plain meaning of the words employed. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (1999). To determine the meaning of a word, the court may consult a dictionary. *Twichel v MIC General Ins Corp*, 469 Mich 524, 534 n 6; 676 NW2d 616 (2004). A reversal is required because the Tax Tribunal and the Court of Appeals reading of the statute cannot be squared with these principles.

No one disputes that the City was engaged in the discharge of a governmental function and acting for public purposes when it sought to expand its borders by annexation, and when it sought to address traffic problems by extending and altering various streets to develop a ring

road, and when it sought to further economic development to enhance the tax base and to attract low and moderate income housing to the City. The focal point of the dispute is on whether the 320 acres of property was being "used" during the tax years.

The dictionary definition of use is to "employ for some purpose; put into service: use a knife." *Random House Webster's College Dictionary*. Thus, the question here is whether the property was being employed for some purpose, that is, put into service. The City's annexation resolution, public pronouncements, and the testimony at trial all confirmed that the property was being employed for some purpose. It was being employed to allow annexation of additional property, which could not occur unless the City owned adjacent, vacant land. Thus, the property was "used for public purposes" when it was acquired to permit the City to expand so that it could address the traffic problems, and foster economic development, and eventually expand its tax base. The property was also being "used for public purposes" when it was assembled and provided with infrastructure. This was a manner of attracting and shaping the City's economic development, by attracting developers for both housing and industrial development. By fronting the costs of infrastructure, the City was pursuing economic development. In doing so, it was using the property for economic development. Thus, the property was exempt.

Michigan's Legislature enacted a broad tax exemption intended to allow cities to own property without paying ad valorem property taxes as long as the property was "used for public purposes." The Legislature did not seek to specifically identify or limit the precise manner in which the property could be used. Instead, it employed a broad and traditional term used to articulate the permissible scope of governmental activity. In doing so, it allowed for maximum flexibility on the part of cities. As public needs change, the governing bodies of cities are empowered to change the uses of their property. And that property is exempt from taxation as long as it is "used for public purposes." The Tax Tribunal and Court of Appeals rulings

impermissibly narrowed the scope of this exemption to impose a tax on property that was "used for public purposes." Therefore, a reversal is required.

ARGUMENT

THE MICHIGAN LEGISLATURE EXEMPTED PROPERTY FROM TAXATION PURSUANT TO MCL 211.7m ON THE BASIS THAT IT IS "USED FOR PUBLIC PURPOSES" WHEN THE PROPERTY IS OWNED BY A CITY AFTER HAVING BEEN ACQUIRED TO ALLOW THE AREA TO BE ANNEXED TO THAT CITY AND IS BEING ASSEMBLED AND PREPARED WITH INFRASTRUCTURE FOR EVENTUAL SALE FOR ECONOMIC DEVELOPMENT PURPOSES THAT HAVE BEEN DETERMINED BY THE CITY TO BE IN THE PUBLIC INTEREST.

A. THE DE NOVO STANDARD OF REVIEW APPLIES TO THIS QUESTION OF STATUTORY INTERPRETATION.

This Court reviews decisions from the tribunal in accordance with Const 1963, art 6, § 28. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631-632; 462 NW2d 325 (1990); *Inter Co-Op Council v Dep't of Treasury*, 257 Mich App 219, 221; 668 NW2d 181 (2003) lv den 469 Mich 1029; 679 NW2d 65 (2004). Const 1963, art 6, § 28 provides, in pertinent part:

> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

Absent fraud, appellate courts review decisions of the Tax Tribunal to determine whether it made an error of law or adopted a wrong principle. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991); *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). This appeal involves issues of statutory interpretation that are reviewed de novo. *Id.* at 222, 668 NW2d 181. All factual findings are final if supported by competent, material, and substantial evidence. *Meadowlanes, supra* at 482, 473 NW2d 636; *Inter Co-Op, supra* at 221, 668 NW2d 181. Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be

substantially less than a preponderance of the evidence. *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994); *Inter Co-Op, supra* at 221-222, 668 NW2d 181.

B. MCL 211.7m EXEMPTS THE CITY OF MT. PLEASANT'S PROPERTY FROM TAXATION BECAUSE IT WAS "USED FOR PUBLIC PURPOSES" AS THAT PHRASE IS COMMONLY UNDERSTOOD.

This Court has repeatedly taught that "[a]n anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature." *People v Wager*, 460 Mich 118, 123, n 7; 594 NW2d 487 (1999). To do so, the reviewing court begins with an examination of the language of the statute. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). *Robinson v Detroit*, 462 Mich 439, 318; 459 NW2d 307 (2000). If the statute's language is clear and unambiguous, then the court assumes that the Legislature intended its plain meaning and the statute is enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). Each word of a statute is presumed to be used for a purpose, and as far as possible, effect must be given to every word, clause, and sentence. *Robinson*, 462 Mich at 318, citing *University of Michigan Board of Regents v Auditor General*, 167 Mich 444, 450; 132 NW 1037 (1911).

A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omni Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). In *Robinson*, this Court reiterated the principle that it could "not assume that the Legislature inadvertently made use of one word or phrase instead of another." 462 Mich at 318, citing *Detroit v Redford Twp*, 253 Mich 453, 456; 235 NW 217 (1931). It also emphasized that the clear language of a statute must be followed. *City of Lansing v Lansing Twp*, 356 Mich 641, 649; 97 NW2d 804 (1959). In *Lesner v Liquid Disposal, Inc*, 466 Mich 95; 643 NW2d 553 (2002), the Court explained yet another time that its "duty is to apply the language of the statute

as enacted, without addition, subtraction, or modification." 466 Mich at 101. This Court emphasized its obligation to enforce the statutory text as written by stating:

> We may not read anything into the unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.... In other words, the role of the judiciary is not to engage in legislation.

Id. citing *Omni Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999) and *Tyler v Livonia Public Schools*, 459 Mich 382, 392-393, n 10; 590 NW2d 560 (1999).

To determine the common meaning of a word, a court may consult a dictionary. *Chandler v Muskegon Co*, 467 Mich 315, 320; 652 NW2d 224 (2002); *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). But an undefined word is not rendered ambiguous simply because different dictionary definitions exist. *Twichel v MIC General Ins Corp*, 469 Mich 524, 534, 535 n 6; 676 NW2d 616 (2004).

Adherence to these principles results in a more consistent approach to statutory interpretation under Michigan law; but they have been misapplied by the Court of Appeals in its interpretation of critically important language in this case. The statute at issue, MCL 211.7m provides:

> Sec. 7m. Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.

This provision creates an exemption from state property taxes for property owned by or being acquired by a municipality, which is "used for public purposes." MCL 211.7m. Like many

statutes written some time ago, this one has a long and convoluted sentence structure. But careful examination reveals that it applies to: "[p]roperty owned by, or being acquired pursuant to, an installment purchase agreement by a ... city ... used for public purposes." MCL 211.7m. The common meaning of the phrases "used for public purposes," is used to effectuate the City's governmental functions. This would encompass property owned by a city after having been acquired to allow the area to be annexed to that city and then being assembled and prepared with infrastructure for eventual sale for economic development purposes that have been determined by the city to be in the public interest.

This Court long taught that what constitutes a public purpose "is primarily a legislative function, subject to review by the courts when abused, and the determination of a public body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect." *Gregory Marina, Inc v Detroit*, 378 Mich 364, 396; 144 NW2d 503 (1966). More recently, in *County of Wayne v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004), this Court examined whether a county's assemblage of land, in part through purchase under an FAA program connected with the airport expansion, to promote economic development within the county advanced a public purpose. 471 Mich at 462. This Court specifically characterized the project as falling within the definition of a public purpose:

> A transition from a declining rustbelt economy to a growing, technology-driven economy would, no doubt, promote prosperity and general welfare. Consequently, the county's goal of drawing commerce to metropolitan Detroit and its environs by converting the subject properties to a state-of-the-art technology and business park is within this definition of a "public purpose."

471 Mich at 462. The Court rejected the use of eminent domain to effectuate this purpose; but it squarely announced that activities such as those at issue here are in furtherance of public purposes. The Court's discussion supports the City of Mt. Pleasant's position. Under *Hathcock*, the City's acquisition of property to allow for annexation and its subsequent efforts to assemble

the property and provide infrastructure to promote economic development are actions taken for public purposes. The property is therefore being "used for public purposes." MCL 211.7m.

The dictionary definition of "use" is also helpful and supports the City's position. According to the *Random House Webster's College Dictionary*, "use" means:

> 1. to employ for some purpose; put into service: to use a knife. 2. to avail oneself of; apply to one's own purposes; to use the facilities. 3. to consume, expend, or exhaust (often fol. by up) ....

Id. Similarly, the discussion of "use" in the Oxford American Writer's Thesaurus supports the City's position. According to the thesaurus, "use" means "utilize, make use of, avail oneself of, employ, work, operate, wield, ply, apply, maneuver, manipulate, put to use, put/press into service." *Id.* Under these definitions, the property was being employed for some purpose—to facilitate annexation and to promote economic development—and those purposes are public. In other words, the City availed itself of the property to allow for annexation of certain property and to promote economic development by assembling it and preparing it with infrastructure. Thus, the City's use of the property falls within the plain meaning of the language in MCL 211.7m. The property was therefore exempt from taxation.

A review of the City's purchase and use of the property makes this clear. During the late 1980s, the City received a housing study that indicated that the City needed low and moderate income housing to meet community needs. (Tr, p 10; Apx 108a). At that time, no land was available in the City to permit the construction of the needed housing. (*Id.*) The City also conducted a study that resulted in the preparation of a master traffic plan. (*Id.*, p 12; Apx 110a). The plan called for construction of a ring road around the urban area. (*Id.*; See also Joint Exhibit 2, reference map; Apx 62a). Part of the plan called for the extension of Preston Street and Bellows Street to Isabella Road. (*Id.*, pp 12-14; Apx 110a-112a). But the City could not accomplish that unless it acquired the land. (*Id.*, p 14; Apx 112a). The only two major streets

under the City's control were Broadway and High Street. (*Id.*) The City acquired land to allow for extension of those streets as well. (*Id.*, pp 12-15; Apx 110a-113a). These changes reduced response time from the public safety building, an important task since the City supplies fire protection for its core community and for the entire township surrounding the City. (*Id.*, p 15; Apx 113a). In furthering these public purposes, the City eventually acquired approximately 320 acres of property.

The City's purpose in acquiring the property was set forth in several resolutions, one of which provided:

> Whereas, growth within the City of Mount Pleasant over the past few years has created pressure upon the city street system to handle the increased traffic demand; and, whereas, there is very little land space remaining within the city which can be used for the development of new industry which is badly needed in the future to expand the city's tax base; and, whereas, the City of Mount Pleasant City Commission has determined that the acquisition of land is necessary to extend the city's major street system and to provide for a future industrial tax base in accordance with the objectives of the City's master plan.

By acquiring this property, the City could address significant traffic problems and facilitate needed development which would not otherwise occur because land within the City's borders was already built out.

After acquiring the property, the City annexed it. (*Id.*, p 16; Apx 114a; Exhibit 16, Minutes of City/Commission Meeting, 6/29/90; Apx 21a). The resolution issued in conjunction with the City's annexation of the property also revealed its public purposes:

> Whereas the City of Mount Pleasant, Michigan, has been very active in promoting development of roads for vehicular traffic, as well as vehicular safety; and, whereas, these efforts have been hampered by the City's lack of control over lands contiguous to its borders; and, whereas, there is a need to extend Bellows Street to Isabella Road in order to enhance the major street system in the city and the surrounding community.

MCL 117.9(8) allows a city to act on its own, without a vote of residents or approval by the State Boundary Commission to annex property. This provision can be used to annex property that is

vacant and adjacent to the City. The City's acquisition was for a public purpose. In other words, the City used the property to facilitate its desire to expand, a desire necessitated by traffic issues and the need to expand the tax base and attract housing and other development. The City purchased the property to effectuate classic public purposes including enhancing traffic safety by acquiring property to annex it and alter the roadway system through the City.

Since then, the City has used the property to attract economic development by assembling land for development, and by fronting the costs for infrastructure improvements, including the roads, water, and sewer. (Tr, p 22; Apx 120a). Some portions have been transferred to other governmental agencies for various purposes, including a state police post, a county health service, and a Social Security building. (Joint Exhibit 10; Apx 60a). A parcel has been set aside and is being used as a park, which is adjacent to a public school. (Tr, pp 23-24; Apx 121a-122a). The City has also sold property to third parties for low and moderate income housing. (Tr, pp 10-11; Apx 108a-109a). As the property was sold, it was put back on the tax rolls. (Tr, p 49; Apx 147a). This history demonstrates that the City acquired the property to annex land, to extend its streets, and to foster low and moderate income housing and economic development. In fact, the City has used the property to accomplish these public purposes.

C. NO DECISIONAL AUTHORITY SUPPORTS THE TAX COMMISSION'S POSITION.

In seeking to tax this property, the Michigan State Tax Commission points to no decisional authority dealing with property being assembled and prepared with infrastructure for eventual sale for economic development purposes. (Brief in Opposition to Application for Leave to Appeal, pp 7-9). Instead, the Commission relies on authority from the early 1900s dealing with vacant land being used for no purpose but held for the possibility of some future use. (*Id.*) The two decisions cited by the Commission, *Traverse City v East Bay Twp*, 190 Mich 327; 157 NW 85 (1916) and *Rural Agricultural School District v Blondell*, 251 Mich 525; 232 NW 377

(1930), do not address taxation of property being assembled and prepared with infrastructure for eventual sale for economic development purposes. Both decisions embraced a narrower proposition; they barred the taxation of fallow land held for no particular purpose and not used in any manner.

Traverse City arose out of a dispute over 960 acres of vacant land that the city had acquired in a neighboring township. The city identified no present use of the property, but only held it for the purpose of future development. *Traverse City* at 328. This Court held the property was not exempt because its present use was to "lie in a state of nature":

> The lands not only are not used for any public purpose, but they are not used for any purpose. They lie in a state of nature and no attempt has, to the present time, been made to utilize them for the development of power, which is the only use of value that can be made of them.

190 Mich at 330-331. Under *Traverse City*, when land is held with no purpose in mind, it is not being "used for public purposes" pursuant to MCL 211.7m.

The *Rural Agricultural School District* dispute involved a different exemption of the General Property Tax Act and thus is not controlling. The relevant statutory provision then in effect for schools exempted property owned by a school district and "used for public purposes," language which is similar to that in MCL 211.7m. *Rural Agricultural School District* at 526. The school district had acquired a tract of land by condemnation. Although it intended to use the property for school purposes in the future, during the relevant tax years, the city leased homes on the property to private parties. This Court found the property to be taxable because the present use—leasing property to private persons—was not for a public purpose.[2] Relying on 2 Cooley

[2]MCL 211.181, which was not enacted until decades later, now renders property leased to private individuals subject to taxation in some circumstances, with the tax to be paid by the private entities. See also MCL 211.191.

on Taxation (4th ed), § 687, the Court emphasized the long-standing rule that focuses the inquiry on present use:

> An intention to use property at some uncertain time in the future, for purposes which will render it exempt from taxation under the laws of the State, does not preclude its taxation before actually used for the purpose warranting an exemption. If the use determines the right to exemption, it is the present use and not the intended use in the future which governs.

Since leasing property to private persons does not amount to using the property for public purposes, it was subject to taxation. See also MCL 211.191.

Traverse City and *Rural Agricultural School District* stand for the proposition that whether the exemption applies depends on the present use, not a potential future use. The City of Mt. Pleasant does not suggest that its property should be evaluated based on a future use. In fact, the future use of the disputed property is that to which the property will be put by the transferees from the City—uses which are, with a few exceptions, taxable, as the City intended all along. On the other hand, the City is entitled to an exemption based on the property's present use during the tax years at issue. The City acquired the property so that it could annex it under MCL 211.9(8), the only authorization for annexation by a home rule city that does not require the approval of any other agency, governmental unit, or electorate. The City annexed that additional land so that it could be added to the City's tax base ,and to assemble it and provide infrastructure to attract desirable economic development that would not otherwise occur. This use of the property rendered it exempt from taxation. The future use, the economic development that ensued when private property owners purchased the property, rendered the properties once again taxable. But the City of Mt. Pleasant's present use during the relevant years, holding property as part of an assemblage process and preparing it for development with infrastructure as part of a municipal effort to direct and facilitate needed economic development, was not taxable since the property was being presently used for public purposes.

The Michigan State Tax Commission circumvented *Hathcock's* acknowledgement that fostering economic development is a public purpose by suggesting that the City of Mt. Pleasant was not using the land at "present" for economic development purposes. But in support of this conclusion, the Commission pointed to no decisional authority. Instead, the Commission asserted that the *Hathcock* court "did not give any indication that it considered owning vacant land with a future plan to use it to broaden a city's tax base to be a public purpose." (Brief in Opposition to Application, p 10). *Hathcock* specifically held that condemnation was authorized under the statute because the "development is projected to bring jobs to the struggling economy, add to tax revenues and thereby increase resources available for public services, and attract investors and businesses to the area, thereby invigorating the local economy." 471 Mich at 466.[3] *Hathcock* held that "the county's goal of drawing commerce to metropolitan Detroit and its environs by converting the subject properties to a state-of-the-art technology and business park is within this [MCL 213.23's] definition of a 'public purpose.'" *Id.* at 462. That same analysis makes clear that the City of Mt. Pleasant's effort to obtain additional property to extend its streets, to expand the tax base, and to foster residential and industrial development constitutes a public purpose. Thus, *Hathcock* supports the City's position insofar as it necessarily requires a conclusion that the City's purpose was sufficient under the taxation exemption.

The Michigan State Tax Commission's central argument appears to be that the property was not being "used" for economic development during the subject tax years. (Brief in Opposition to the Application, pp 10-12). The Commission asserted that the public purpose of economic development "could not be undertaken or achieved until the land was sold and the tax thereby increased." (*Id.*, p 11). The City was "necessarily not achieving its planned public

[3]Of course, *Hathcock* found it to be unconstitutional to take private property for private use.

purpose during the subject years." (*Id.*) Under the Commission's logic, property so-used would always be taxable because the City could not achieve its purpose until the property was sold and by then, it would be in the hands of a private person or entity, would not be used for public purposes, and would be taxable. This assertion evidences the error in logic that underlies the Commission's argument (and that in the Court of Appeals decision).

Michigan courts have never held that property is exempt from taxation only when a public purpose has been achieved. Applied to schools, for example, this might mean that the school would be subject to taxation until it achieves the public education that they seek to instill in students. Or it might mean that property purchased for a town hall would be taxed from the purchase until the town hall was actually opened for operations. Or it might mean that property under construction for a playground would be subject to taxation until the playground was occupied with children. Michigan courts have never understood "used for present purposes" in this manner. And the Commission points to no decisional authority in support of this interpretation.

The Legislature enacted a broad exemption for property held by a city and used for public purposes to foster and assist cities to achieve those purposes and to prevent cities from paying taxes on property used for public purposes. Yet the lower court rulings, if allowed to stand, will impose financially crushing tax burdens onto cities for ownership of property that is used to foster and shape growth and development needed to satisfy important public needs. Nothing in the statutory text or Michigan decisional authority supports this outcome.

In the absence of Michigan decisional authority to support its analysis, the Court of Appeals looked to Kansas for a case neither party cited in their briefs or at oral argument. *In re Wichita*, 877 P2d 437 (Kan, 1994). *Wichita* involved the question of whether a home and garage that the city acquired in a drug forfeiture proceeding, and which it planned to repair and sell, was

exempt from taxation. The Kansas Supreme Court held that ownership of property solely to produce revenue to finance a government function did not constitute use for a public purpose under Kansas law. The Court explained that mere ownership of property by a government was not enough to qualify for the exemption. 877 P2d at 441-442. According to the Court, although the government held title to the property and obtained revenue when it was sold, it did not actually use the property. *Id.* at 442. In so ruling, however, the Kansas Supreme Court distinguished its decision from a much earlier case, *Durkee v Comm'rs of Greenwood Co*, 29 Kan 697 (1883). In *Durkee*, the county acquired property in satisfaction of a debt owed to it and then sold it to pay off the debt. According to the Court, because "the property was taken to satisfy a debt due to the country, and was taken and used by the country, it was exempt. 1883 WL 820 *1. The Court elaborated on this emphasizing that the land was not cultivated or employed with public buildings, it was held for the use of the county in payment of a debt and, when sold, the proceeds were for the use of the county. *Id.* at *2. The Court noted that this might have been the only recourse available to the county to recover the debt. *Durkee* illustrates the breadth of uses of property for public purposes. And it underscores the difference between merely holding land with no purpose and using it to further a purpose—here, the payment of a debt. The Kansas Supreme Court held the property was exempt while owned by the county because the county's ownership and sale "served a public purpose" whereas in *Wichita*, the ownership and sale was only incidental to a public purpose. 877 at 442.

Other jurisdictions have also concluded that property used in a less active manner (that is without being cultivated or built upon) may still be used for public purposes and thus exempt. In *City of Oceola v Board of Equalization, Clarke County*, 176 NW 284 (Iowa, 1920), for example, a city bought land surrounding an artificial lake that was part of the city's system of waterworks to withdraw it from cultivation and turn it into grasslands to prevent soil from washing into the

lake. The Court held that this property was being used for public purposes even though the city collected rents for use of the land as pasturage. The charges were incidental to the public purpose of protecting the lake waters and city's waterworks. See also *Borough of Middlesex v Inhabitants of City of Plainfield*, 105 A 724 (NJ Ct Err & App, 1918) (property used to provide increased waste disposal facilities and to physically isolate plant from surrounding area to avert nuisance used for public purposes even though property was not occupied by plant); *Bergen County v Borough of Paramus*, 399 A2d 616 (1979) (land used as buffer might qualify for exemption but factual issues required remand); *Township of Berkley Heights v County of Union*, 710 A2d 1028 (NJ App Div, 1998) (county property formerly used as hospital used for public purposes until sold even though took decade to consummate sale due to environmental issues); *Delaware County Solid Waste Authority v Berks County Board of Assessment Appeals*, 626 A2d 528 (1993) (property acquired to use as buffer around solid waste plant and used for that purpose exempt from taxation); *Board of County Commissioners of Lake County v Supanick*, 289 NE2d 902 (Ohio, 1972) (property acquired for public hospital exempt from taxation even though had not been used in that manner where feasibility studies of other forms of financing had been made following an electoral defeat of two efforts to procure funding for the hospital); *Pulaski County v Carriage Creek Property Owners Improvement District No 639*, 888 SW2d 652 (Ark, 1994) (property obtained by foreclosure of a government acting in its governmental capacity and held pending its sale to recover delinquent taxes and penalties was exempt from taxation as public property used for public purposes). Their decisions provide persuasive authority for the proposition that property may be used for public purposes even when it is neither cultivated nor built upon for a city hall, school, or other public building, but is used for some other public purpose.

The use by the City of Mt. Pleasant was not incidental to a public purpose. The City of Mt. Pleasant intentionally acquired the property for purposes of annexing it to the City, platting it, providing infrastructure, and marketing it to enhance the City's tax base. These economic development purposes are proper public purposes. Property used for these purposes should therefore be tax exempt, a point the Court of Appeals recognized when it observed that *Hathcock* had held that "economic development is a public purpose." (Court of Appeals slip op, p 2; Apx 209a). As a result, the City is not obligated to pay *ad valorem* property taxes on the property.

The analysis employed by the Michigan Court of Appeals in *Municipal Employees Retirement Systems of Michigan v Delta Twp*, 266 Mich App 510; 702 NW2d 665 (2005) is consistent with the City's position here and contradicts the arguments advanced by the Commission. As the Michigan State Tax Commission noted, the Court of Appeals held that the property at issue in that case was exempt because the government entity was required to hold the land to meet disbursements. (Brief in Opposition to Application, pp 8-9). The Court of Appeals concluded that this municipal holding of land amounted to a present use for a public purpose because it was the holding that was the present use but, in contrast with *Traverse City*, the holding was not merely to allow the property to lie fallow in case it should someday be used. The holding was an active use to comply with statutory requirements related to bonds. As in *Municipal Employees Retirement Systems of Michigan*, the City of Mt. Pleasant's property is not being held fallow for no present purpose. It is being held for assemblage and being prepared for development with infrastructure. Thus, like the property at issue in *Municipal Employees Retirement Systems of Michigan*, the property at issue here is exempt from taxation.

D. A CANON OF CONSTRUCTION SHOULD NOT BE USED TO OVERRIDE THE UNAMBIGUOUS WORDS OF A STATUTE AND, IN ANY EVENT, THIS CANON IS INAPPLICABLE TO EXEMPTIONS APPLIED TO LOCAL GOVERNMENTS.

Rather than defer to the local government's determination concerning the public purposes for which its property will be used, the Court of Appeals accepted an argument offered by the State Tax Commission that the Court should defer to the Tax Tribunal's interpretation and that it should adhere to a canon of construction placing a heavy burden on those claiming tax exemptions. (Court of Appeals slip op, p 2; Apx 209a; See also Appellee's Brief, pp 9-11). This canon of construction ought not be used to replace a textual analysis.

It is, of course, an elemental canon of statutory construction that plain, clear and unambiguous legislative enactments need no, and should have no, construction or interpretation and are to be read and applied as written. *Gort v Macomb County Community Mental Health Services*, 472 Mich 263, 281; 696 NW2d 646 (2005). See also 2A Sands, Sutherland Statutory Construction (4th ed), §§ 46.01-46.07, pp 48-68. Statutes are to be read by assigning to the words used their primary and generally understood meaning. The judicial function is to apply statutes as they are written, not in a manner which to the Court seems more equitable than the Legislature provided. *Bankers' Trust Co of Detroit v Russell*, 263 Mich 677; 249 NW 27 (1933). If the language employed in a statute is plain, certain and unambiguous, a bare reading suffices and no interpretation is necessary. *Ayar v Foodland Distributors*, 472 Mich 713; 698 NW2d 875 (2005); *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192; 694 NW2d 544 (2005); *Quality Products & Concepts Co v Nagel Precision*, 469 Mich 362; 666 NW2d 251 (2003); *Grand Rapids v Crocker*, 219 Mich 178, 182; 189 NW 221 (1922).

Despite the teachings of this Court, the Court of Appeals employed various canons of construction and other interpretive tools in derogation of the statute's text. It did so by relying on *Skybolt Partnership v City of Flint*, 205 Mich App 597; 517 NW2d 838 (1994), a decision

that did not involve a claim by a governmental entity that it was entitled to avoid taxes because of an exemption for government-owned property that is "used for public purposes." *Skybolt Partnership* was based on a private partnership's claim that it was exempt from city taxes. Nothing in *Skybolt Partnership* suggests that the canon of construction requiring a court to construe a tax exemption against the entity claiming it should be applied to a local government. The *Skybolt* court did not reach that issue because it was not raised or presented by the private entity challenging the taxes.

Other jurisdictions have held that this canon does not to apply when the entity seeking an exemption is a government itself. See e.g. 16 McQuillin's The Law of Municipal Corporations, (3d ed, 2003) pp 251-252 ("the rule that provisions exempting property of individuals or private corporations from taxation is to be strictly construed does not apply when a municipality asserts exemption from taxation although there is authority to the contrary."). The Virginia Supreme Court, for example, explained that the general rule to strictly construe provisions exempting individuals and corporations from taxation does not apply to municipalities; as to them, "exemption is the rule and taxation the exception." *HL Pelouze Trading, Etc v City of Richmond*, 183 Va 805; 33 SE2d 767, 810 (1945) citing *Commonwealth v Smallwood Memorial Institute*, 124 Va 142; 97 SE 805 (1919) and 51 Am Jur, Taxation §§ 556, 562.

The rationale for this treatment was discussed in *Interwest Aviation v County Board of Equalization of Salt Lake County*, 743 P2d 1222, 1225 (Utah, 1987). The Utah Supreme Court reasoned that "the exemption is based on the policy that property owned and used for the public benefit of one governmental entity or subdivision should not be taxed by another because that would defeat the purpose of the exemption... [i]n other words, city taxpayers would, in effect, be subsidizing county taxpayers." *Id.* at 1225. Like these jurisdictions, the Michigan Legislature

has exempted property owned by a municipality and used for public purposes from taxation. MCL 211.7m.

E. REVIEW OF THE TAX CODE REVEALS THE LEGISLATURE'S CONSISTENT EFFORT TO PROTECT GOVERNMENT ENTITIES FROM HAVING TO PAY REAL PROPERTY TAXES BECAUSE THEIR PROPERTY IS ORDINARILY USED FOR PUBLIC PURPOSES.

The Legislature enacted a lengthy list of exemptions for various governmental entities to ensure that if real property is acquired and used for public purposes, it is not taxed. See The General Property Tax Act, Act 206 of 1893, MCL 211.1 *et seq*. For example, the Legislature provided for prorating of taxes if property is acquired for public purposes, an approach that ensure that tax is not collected for that portion of the year during which a government used property for public purposes. MCL 211.2(2). The Legislature exempted public property belonging to the state, MCL 211.7j, and property owned by nonprofit charitable institutions or charitable trusts, if leased, loaned, or otherwise made available to a governmental entity. MCL 211.7o. The Legislature exempted property leased, loaned, or otherwise made available to a school district or educational institution as long as it was used for public school or educational purposes. MCL 211.7z. And the Legislature enacted the broad exemption applicable here, an exemption that employs the broadest terms possible to describe its parameters. MCL 211.7m.

At the same time, the Legislature sought to ensure that taxes are collected when real property owned by the government, but not used for public purposes, is subject to tax. To do so, it enacted MCL 211.181, which provides:

> Except as provided in this section, if real property exempt for any reason from ad valorem property taxation, is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lesser or user owned the real property.

Id. This provision imposes a tax on government-owned real property being used by private entities for profit. Reading this together with MCL 211.7m suggests that government-owned property, which is used for public purposes, is intended to be protected from taxation by a broad exemption. At the same time, when a government leases, loans, or makes the property available to a private entity to conduct a business for profit, then that private entity will be subject to tax "in the same amount and to the same extent as though the lesser or user owned the real property." *Id.* By making the lessee or user, and not the government, subject to the tax, the Legislature underscored its intention that government entities are not ordinarily subject to real property tax.

F. THE COURT OF APPEALS INCORRECTLY NARROWED THE EXEMPTION CREATED IN MCL 211.7m BY MISINTERPRETING EXEMPTIONS AVAILABLE FOR ECONOMIC DEVELOPMENT ACTIVITY ENGAGED IN BY ENTITIES NOT PROTECTED UNDER MCL 211.7m.

The Court of Appeals held that, although economic development is a public purpose, property being used for that purpose is taxable unless it falls within a specific exemption created under an economic development statute. (Court of Appeals slip op, p 2; Apx 209a). This constituted error and threatens to deprive local governments of a legislatively-created tax exemption merely because another tax exemption is theoretically available to different entities under other circumstances. Moreover, the Court's analysis of the unnamed economic development statutes is erroneous. Although the Court's failure to mention the statutes specifically makes analysis of its opinion somewhat difficult, a review of a number of these statutes reveals that the exemptions within them were not created to offer tax protection to local governments, but to other entities.

The Court's reasoning is based on a premise that is demonstrably mistaken. The Court apparently reasoned that, since the legislature created specific tax exemption provisions for economic development activity, it must have been because the local government exemption did

not apply. This "logic" is flawed to begin with because the legislature often creates statutory categories that overlap, with the idea that each will apply on its own terms. See e.g., *Omelenchuk v City of Warren*, 466 Mich 524; 647 NW2d 493 (2002). The Court's reasoning is further flawed since it squarely rests on a mistake concerning the tax exemptions created under the various statutes. Of the approximately twenty statutes cited by the parties in their appellate briefs, only five contain tax exemptions of any kind. In all five cases, the specific provision grants a tax exemption to a non-municipal entity. Thus, the legislature did not create a different more elaborate scheme for obtaining exemptions for property owned by a local government and used for economic development purposes.

The State Housing Development Authority Act, MCL 125.1401 et seq., for example, grants an exemption to nonprofit housing corporations, consumer housing cooperative, limited dividend housing corporations, mobile home park corporations, or mobile home park associations, which receive federal funds and meet various other criteria. The exemption allows qualifying entities to avoid state and local taxes but requires them to pay a service fee to the local government to cover the cost for city services. See MCL 125.1415a. Even if a local government is similarly involved in developing low cost housing alternatives, it would not qualify for the exemption created here. But contrary to the Court of Appeals' reasoning, this should not be read to suggest that the Legislature did not want local government property being used for economic development purposes to be exempt. It is more likely that the Legislature presumed that the local government's property was already exempt under the broad language of MCL 211.7m.

Similarly, the Economic Development Corporations Act, MCL 125.1601 et seq., provides a tax exemption for property owned by and for the EDC. MCL 125.1625 provides:

> The corporation shall be exempt from all taxation on its earnings or property. Instruments of conveyance to or from a corporation shall be exempt from all taxation including taxes imposed by Act No. 134 of the Public Acts of 1966, as amended, being sections 207.501 to 207.513 of the Michigan Compiled Laws.

This exemption also does not apply to municipal corporations or other local governments that are engaged in economic development efforts. Nothing in the existence of this exemption suggests that the Legislature intended to deprive local governments of the broad exemption it created when they are engaged in comparable kinds of economic development. If anything, a contrary conclusion is more likely. The Legislature created this exemption because it wanted to extend the exemption available to local governments so that it also covered economic development corporations. Economic development corporations are independent legal entities, not departments of a city.

The exemption created by the Enterprise Zone Act, MCL 125.2101 *et seq.*, is likewise unavailable to local governments. MCL 125.2120 provides:

> Sec. 20. (1) For a qualified business located in an enterprise zone that was created before 1994, unless the certification of the qualified business is revoked as provided in this act, for 10 years from the date on which construction, restoration, alteration, or renovation begins, or through December 31, 2004, whichever occurs first, a new facility owned by the qualified existing business or industrial or commercial property located in an enterprise zone owned by the qualified new business is exempt from ad valorem real and personal property taxes imposed under the general property tax act. For a qualified existing business certified after June 1, 1990 and for purposes of this subsection only, a new facility includes only the portion of the existing property attributable to the restoration, alteration, or renovation.
>
> (2) Except as otherwise provided in this subsection, for a qualified business located in an enterprise zone that was created after 1993, unless the certification of the qualified business is revoked as provided in this act, and except as provided in section 21a(8), for 5 years from the date of certification, a facility owned by the qualified business is exempt from ad valorem real and personal property taxes.

Id. This exemption offers businesses engaged in needed economic development a tax break. Nothing in this provision suggests that the Legislature did not intend to allow local governments a tax break for property that they use for a similar purpose. In fact, contrary to the Court of Appeals reasoning, a more likely reading of the two provisions is that the Legislature sought to

extend the tax exemption traditionally available to local governments to cover private businesses engaged in this kind of effort for the specified time period.

The Renaissance Zone Act, MCL 125.2101 et seq., grants an exemption to individuals and business located in renaissance zones. MCL 125.2689 provides as follows:

> Sec. 9. (1) Except as otherwise provided in section 10, an individual who is a resident of a renaissance zone or a business that is located and conducts business activity within a renaissance zone shall receive the exemption, deduction, or credit as provided in the following for the period provided under section 6(2)(b):
>
> (a) Section 39b of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.39b of the Michigan Compiled Laws.
>
> (b) Section 31 of the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being section 206.31 of the Michigan Compiled Laws.
>
> (c) Section 35 of chapter 2 of the city income tax act, Act No. 284 of the Public Acts of 1964, being section 141.635 of the Michigan Compiled Laws.
>
> (d) Section 5 of the city utility users tax act, Act No. 100 of the Public Acts of 1990, being section 141.1155 of the Michigan Compiled Laws.
>
> (2) Except as otherwise provided in section 10, property located in a renaissance zone is exempt from the collection of taxes under all of the following:
>
> (a) Section 7ff of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.7ff of the Michigan Compiled Laws.
>
> (b) Section 11 of Act No. 198 of the Public Acts of 1974, being section 207.561 of the Michigan Compiled Laws.
>
> (c) Section 12 of the commercial redevelopment act, Act No. 255 of the Public Acts of 1978, being section 207.662 of the Michigan Compiled Laws.
>
> (d) Section 21c of the enterprise zone act, Act No. 224 of the Public Acts of 1985, being section 125.2121c of the Michigan Compiled Laws.
>
> (e) Section 1 of Act No. 189 of the Public Acts of 1953, being section 211.181 of the Michigan Compiled Laws.
>
> (f) Section 12 of the technology park development act, Act No. 385 of the Public Acts of 1984, being section 207.712 of the Michigan Compiled Laws.
>
> (g) Section 51105 of part 511 (commercial forests) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.51105 of the Michigan Compiled Laws.

(h) Section 9 of the neighborhood enterprise zone act, Act No. 147 of the Public Acts of 1992, being section 207.779 of the Michigan Compiled Laws.

(3) During the last 3 years that the taxpayer is eligible for an exemption, deduction, or credit described in subsections (1) and (2), the exemption, deduction, or credit shall be reduced by the following percentages:

(a) For the tax year that is 2 years before the final year of designation as a renaissance zone, the percentage shall be 25%.

(b) For the tax year immediately preceding the final year of designation as a renaissance zone, the percentage shall be 50%.

(c) For the tax year that is the final year of designation as a renaissance zone, the percentage shall be 75%.

This exemption does not apply to local governments. But, like the other exemptions in this area, it suggests that the Legislature recognized that fostering economic development is a public purpose. The provision does not suggest that the Legislature sought to deprive local governments of their normal tax exemption for property being used for this purpose. It suggests rather that the Legislature extended a tax exemption to individuals and businesses that is similar to the more comprehensive exemption already available to local governments under MCL 211.7m.

The Urban Redevelopment Corporations Act, MCL 125.901, also creates an exemption. MCL 125.912 provides:

A local legislative body is authorized by the adoption or enactment of an ordinance or local law to exempt real property located within the city or township owned by a redevelopment corporation or a qualified entity during a maximum exemption period that shall not exceed 40 years from any increase in assessed value over the maximum assessed value. After the adoption or enactment of the ordinance or local law, every parcel of real property owned by any redevelopment corporation or a qualified entity in a development shall be exempt during the maximum exemption period from any increase in assessed value over or in excess of the maximum assessed value. An exemption described in this subsection shall not, however, apply to any improvement made upon the real property after the beginning of the maximum exemption period but the local legislative body may, by appropriate legislative action, establish a maximum assessed value and maximum exemption period, not to exceed 40 years, for those subsequent improvements.

(2) For the purpose of fixing the date of commencement of the maximum exemption period for a group of parcels of real property in a development area, the city or township is authorized with the approval of its local legislative body to contract with a redevelopment corporation to place in 1 or more groups the various parcels of real property in a development area. A contract described in this subsection may provide that all the parcels in each group shall be considered to have a common stated date of completion of the development by the redevelopment corporation or qualified entity.

(3) A development plan may include property located in a township only if that property was previously used by this state for an office, hospital, prison, institution of higher education, or other state facility.

(4) For purposes of this section, "qualified entity" means either of the following:

(a) A Michigan nonprofit corporation or a Michigan limited partnership having a Michigan nonprofit corporation as its sole general partner, if 1 or more of the following apply:

(i) A majority of each class of stock in the nonprofit corporation is owned by the redevelopment corporation.

(ii) A majority of the members of the board of directors of the nonprofit corporation are elected and removable by the redevelopment corporation.

(iii) The redevelopment corporation is the sole member of the nonprofit corporation.

(b) A for-profit corporation, partnership, or limited liability company formed or incorporated by the redevelopment corporation for the sole purpose of syndicating historic tax credits or low-income housing tax credits in connection with the redevelopment of a property that has been owned by the redevelopment corporation, if the redevelopment corporation maintains oversight responsibility for the management and operation of the property for which historic tax credits or low-income housing tax credits were syndicated and the for-profit entity does not engage in any other business activity unrelated to the property.

This provision does not abrogate the normal exemption from property taxes held by a local government. It empowers the local government to create an additional exemption for redevelopment corporations or qualifying entities to benefit from avoiding taxes.

None of these provisions offer an exemption to local governments using property for economic development purposes. Thus, they do not suggest that the Legislature read MCL 211.7m more narrowly. To the contrary, as can be seen from the plain language of MCL

211.7m, the Legislature assumed that local governments already had an exemption for property that was used for economic development purposes, since that is a public purpose. The Legislature sought to extend this same exemption to other individuals and entities engaged in economic development activities of various kinds.

The sequence of adoption of the various statutes also undercuts the Court of Appeals' analysis. MCL 211.7m was enacted long before any of these economic development statutes. It contains broad language exempting property owned by local governments and "used for public purposes." This broad language was intended to assure that property used for beneficial government purposes is not taxed. It stems from the long-standing tax policy that prohibits one level of government from taxing the citizens of another level of government to pay for its programs. The Legislature enacted various economic development statutes many years after MCL 211.7m had been in existence. In doing so, it merely extended a tax exemption already available to cities to other entities whose property was being used for the purpose of economic development. The later statutes were not enacted to create a local government exemption for this purpose. They were enacted to supplement the existing exemption and to apply it in specified broader circumstances.

RELIEF

Wherefore, the City of Mt. Pleasant respectfully requests this Court to reverse the Court of Appeals and Tax Tribunal, hold that the disputed parcels are exempt from taxation under MCL 211.7m, and grant them such other relief as is warranted in law and equity.

Respectfully submitted,

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DATED: March 9, 2006

STATE OF MICHIGAN

IN THE SUPREME COURT

CITY OF MT. PLEASANT

Petitioner-Appellant,

-vs-

MICHIGAN STATE TAX COMMISSION,

Respondent-Appellee,

_____/

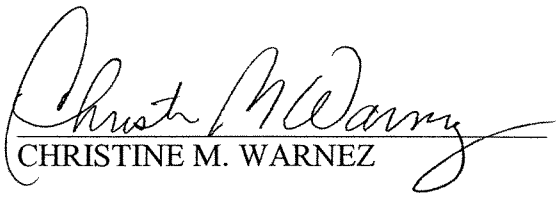
Supreme Court No. 129453

Court of Appeals No. 253744

Michigan Tax Tribunal Docket Nos. 191496, 196247, 238596, 240992, 240993, 240994, & 240995

PROOF OF SERVICE

CHRISTINE M. WARNEZ states that on March 9, 2006, the Brief and Appendix of Petitioner-Appellant City of Mt. Pleasant, was served on HEIDI L. JOHNSON-MEHNEY, Attorney for Respondent, Michigan Department of Attorney General, PO Box 30212, Lansing, MI 48909; JANO HANNA, Attorney for Amicus Wayne County, Wayne County Corporation Counsel, Real Estate and Business Development, International Building, 400 Monroe, Suite 680, Detroit, MI 48226; BREE POPP WOODRUFF, Attorney for Amicus Michigan Municipal League, One East Michigan Avenue, Suite 900, Lansing, MI 48933, by depositing same in the United States Mail with postage fully prepaid.



CHRISTINE M. WARNEZ